S.B.CRIMINAL MISC. PETITION NO.193/2004
(Suresh Chandra and ors. V/s State of Rajasthan)

Date of order : : 29.03.2007

HON'BLE MR. KRISHAN KUMAR ACHARYA, J.

Mr.Hanwant Singh Balot, for the petitioner(s).
Mr.Ashok Upadhyay, PP for the State.

Heard the learned counsel for the petitioner as well as learned Public Prosecutor.

The main contention of the learned counsel for the petitioner is that the police after investigation has filed FR in the matter, on which notices were issued to the complainant and he filed protest petition in the matter. The learned counsel for the petitioner states that although it has been mentioned that the statement of Hansa Ram has been recorded under Section 202 Cr.P.C., but in fact, statement of Hansa Ram has also been recorded under Section 200 Cr.P.. and no enquiry was conducted under Section 202 Cr.P.C. The learned counsel for the petitioner further states that the learned Magistrate on the basis of both the statements recorded under Section 200 Cr.P.C., the learned Magistrate has taken cognizance against the petitioners for offence under Sections 3(1)(V) and 3(1)(X) of the SC and ST (Prevention of Atrocities) Act. The learned Magistrate has not considered the grounds given by the police in the FIR and has not assigned any reason for not believing the grounds given by the Police in the FR.

The learned counsel for the petitioner states that the first ground given by the police for giving FR is that a complaint case was registered against the complainant, Hansaram and other persons for offences under Sections 147, 148, 149, 353, 332 and 427 I.P.C. and the police after investigation has filed charge-sheet against the complainant and other accused persons. The present FIR has been lodged as a counter blast to that FIR. The other ground given by the police is that no incident has taken place at the place where the complainant has alleged that accused persons came there and broken the cabin and also abused the complainant. In fact, the cabin of the complainant is situated towards North at Goili Chauraha, where the employees of the Municipal Board had not gone. The police has also given a reason that in the FIR, the complainant has mentioned that the proceedings for regularisation are going on, whereas in fact, no proceedings for regularisation are going on. The Fifth ground given by the police for submitting the FR is that the employees of the Municipal Board were acting under the orders of State Government for removing the encroachment made on Highway Road, where the complainant and other cabin holders threw stones and in order to pressurize the employees of the Municipal Board, this FIR has been lodged. The employees of the Municipal Board had not gone to the cabin of the complainant. No occurrence took place at the cabin of the complainant. The police has also recorded a reason that the FIR has been lodged after a delay of one day and if the actual occurrence had taken place, the FIR would have been lodged on the same day. The present FIR has been lodged by the complainant when he came to know of lodging of FIR bearing No.41/2001 against him.

The learned counsel for the petitioners states that the learned Magistrate has not given any cogent reasons for disbelieving the grounds given by the police in the FR and not relying on the material collected by the police during the course of investigation and merely on the basis of statements of two witnesses, has taken cognizance against the petitioners.

On the other hand, the learned Public Prosecutor has stated that the order passed by the learned Magistrate is based on the material available on record and the statements of witnesses recorded by the learned Magistrate. He, therefore, prays that no interference is warranted in the order passed by the learned Magistrate.

I have considered the rival submissions made by the learned counsel for the petitioner as well as the learned Public Prosecutor and has also perused the order passed by the learned Magistrate.

While passing the impugned order, the learned Magistrate has relied on the statements of Chhagan Lal and Hansa Ram and after perusing the documents on record, he has taken cognizance. From the perusal of the impugned order, it is apparent that the learned Magistrate has not mentioned that he has considered the complete material on record and he has also not given any reason as to why he is disbelieving the grounds given by the police in the FR.

For the reasons mentioned above, the present misc. petition is

allowed. The order dtd.10.2.2004 passed by the learned Chief Judicial Magistrate, Sirohi is quashed and set aside and the matter is remanded back to the learned Chief Judicial Magistrate, Sirohi to pass a fresh reasoned order after considering the grounds given in Final Report and also evidence recorded in the court after giving an opportunity of hearing to both the parties.

(KRISHAN KUMAR ACHARYA), J.

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